IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8684 of 2005

Between:

D.B. Ramchander, S/o. D.S. Krishna,
R/o. H.No.8-2-680/3, Road No.12, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 State of A.P., rep. by its Secretary,

Ministry of Municipal Administration,
Secretariat, Hyderabad.
2 Municipal Corporation of Hyderabad, rep. by its Commissioner,

Tank Bund Road, Hyderabad.
3 The Collector, Hyderabad District, Nampally Station Road,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Pass an order to issue a writ, direction or order more particularly a writ of Mandamus, declaring the action of the second respondent in asking for the No-Objection Certificate from the office of the Collector, Hyderabad vide letter dt. 11.4.2005 bearing No. 0216/CSC/TP5/05-1456 for according permission for construction of a commercial complex in premises bearing Municipal No. 8-2-680/3, situated at road No.12, Banjara Hills, Hyderabd, arbitrary, illegal, null and void and without jurisdiction and issue a consequential direction to the respondents to consider and approve the building plan of the petitioner for construction of commercial complex in premises bearing Municipal No. 8-2-680/3, situated at Road No. 12, Banjara Hills, Hyderabad admeasuring 2019 Sq. Yards, without insisting on the NOC and pass such other order or orders which this Hon'ble Court deems fit and

proper in the circumstances of the case.

Counsel for the Petitioner: MR.KISHORE RAI

Counsel for the Respondents: GP FOR MUNCIPAL ADMN. & URBAN DEV. SMT.G. JYOTHI KIRAN

The Court at the admission stage made the following :

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the second respondent in not receiving the application of the petitioner seeking building permission in respect of the premises bearing Municipal No.8-2-680/3, situated at Road No.12, Banjara Hills, Hyderabad, by insisting on production of a 'No Objection Certificate' from the District Collector, Hyderabad, as illegal and arbitrary.

When the matter is taken up for consideration, it is represented by the learned counsel for the petitioner as well as the learned Government Pleader for Municipal Administration and Urban Development appearing for respondents 1 and 3 and the learned standing counsel appearing for the 2nd respondent-Corporation that the issue involved in this writ petition is squarely covered by the decision of this Court in ***HYDERABAD POTTERIES PRIVATE LIMITED VS. DISTRICT COLLECTOR, HYDERABAD***, wherein it was held as under:

> *"The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objections(s) whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the ownership. All that the Commissioner require to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more."*

It is also brought to my notice that in W.A.No.1096 of 2001 filed against the said decision, a Division Bench of this Court held that the Commissioner, while acting under Section 429(1)(a) of the Hyderabad Municipal Corporation Act, 1955 read with relevant building bye-laws, acts as a statutory authority and required to make decision on relevant material and facts and that it is not legally permissible for such authority to base its decisions only on one piece of relevant material and to exclude other relevant material.

In view of the above, the impugned order dated 11.04.2005 is set aside and the writ petition is disposed of with a direction to the second respondent to consider the application of the petitioner afresh and to pass appropriate orders in accordance with law without insisting on production of no-objection certificate from the Collector, Hyderabad, within a period of four weeks from the date of receipt of this order. No costs.

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21.04.2005

Note:Furnish C.C., by Monday.

(B/O)

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To

1 The Secretary, State of A.P.,

Ministry of Municipal Administration,
Secretariat, Hyderabad.

2 The Commissioner,Municipal Corporation of Hyderabad,

Tank Bund Road, Hyderabad.

3 The Collector, Hyderabad District, Nampally Station Road,

Hyderabad.

4 Two CCs to the G.P for Municipal Administration and Urban

Development, High Court of A.P., Hyderabad(O.U.T).

5 2 CD copies.